

Office of Chief Counsel
Internal Revenue Service

memorandum

CC:LM:CTM:LN:TL-N-2160-01
JSHargis

date: May 18, 2001

to: Dan Williams, Team Coordinator
Southern California, LMSB; 1755

from: Area Counsel
(Communications, Technology, and Media: Oakland)

subject: [REDACTED] - I.R.C. 6621(d) claims
EIN: [REDACTED]
Years: [REDACTED] - [REDACTED]

Issue

Whether a Form 872 extends the limitations period for filing a claim for the payment of additional interest allowable, under I.R.C. § 6611, on the overpayment of taxes ("the overpayment limitations period") for purposes of claiming the interest netting relief under I.R.C. § 6621(d)?

Conclusion

No. Revenue Procedures 99-43 (applicable for interest accruing before the calendar quarter beginning October 1, 1998) and 2000-26 (applicable for interest accruing after the calendar quarter beginning October 1, 1998) defines the overpayment limitations period as the six-year period within which to file a suit pursuant to 28 U.S.C. §§ 2401 and 2501, i.e., within six years from the date of the allowance of the refund or credit of the overpayment of tax. See Rev. Rul. 56-506, 1956-2 C.B. 959. A Form 872 does not affect this six-year period defined in 28 U.S.C. §§ 2401 and 2501. So, in order for [REDACTED] to qualify for the interest netting relief provided by I.R.C. § 6621(d), [REDACTED] must have filed its claim for the payment of additional interest allowable on an overpayment of taxes under I.R.C. § 6611 ("overpayment interest") within the six-year period following the allowance of the refund or credit of the overpayment of tax.

Recommendations

We recommend that you obtain from [REDACTED] the information required by Rev. Proc. 99-43 and 2000-26. [REDACTED] in submitting its interest netting claims on the Forms 843, did not provide sufficient information that identifies the type of tax, taxable periods, the overlap periods (i.e., periods during which both overpayment interest and underpayment interest were accruing) as well as other information required by Rev.

Proc. 99-43 and 2000-26 and the effective date provisions applicable to section 6621(d). These defects must be cured or else [REDACTED]'s claims for interest netting relief are untimely.

In addition, [REDACTED] must also commit to using the overlap periods (once it has identified them) only once; it cannot use the same periods again for another claim for interest netting relief. As described below, the Service does not have sufficient information to make the necessary calculations to achieve the interest netting relief envisioned by Congress. For example:

(1) it is not clear whether [REDACTED] in its claims for interest netting relief encompasses its May/Sequa interest claims (discussed below). This is important because Congress wanted the Service to consider interest paid on previously determined deficiencies and refunds regardless of whether the underpayments or overpayments are currently outstanding. The May/Sequa interest claims concern interest paid on previously determined deficiencies.

(2) [REDACTED] needs to identify the tax overpayments resulting from the net operating loss carry-backs and credit carry-backs because I.R.C. § 6611(f) restricts the interest allowable on such overpayments and [REDACTED] may be claiming excess overpayment interest.

Once the Service has obtained the required information, you may need to obtain further guidance in the form of a field service advice or a technical advice memorandum because of the complexities that arise (for example, the restricted interest provisions of I.R.C. § 6611(f)) from tax overpayments generated by net operating loss or credit carry-backs.

Facts¹

In [REDACTED], [REDACTED] executed a Form 872 extending the assessment limitations period to [REDACTED], for its [REDACTED] through [REDACTED] years. In [REDACTED], [REDACTED] submitted a Form 843² for each of the years [REDACTED] through [REDACTED]. [REDACTED] asserts that it had timely submitted the Forms 843 because the Form 872 extends the period, in which a taxpayer can file a claim for refund or credit the tax for these years, to [REDACTED].

¹ All of the facts set forth in this opinion were obtained from Mr. William's request for advice. Other than obtaining the tax modules for [REDACTED]'s [REDACTED] through [REDACTED] years, we have made no independent investigation of the facts in this case. Our legal conclusions may change if the actual facts are different than the facts represented to us by Mr. [REDACTED].

² Form 843, Claim for Refund and Request for Abatement.

On each of the Forms 843, [REDACTED] stated that it was filing the form in order to keep the limitations period open for the interest netting relief provided for in I.R.C. § 6621(d). On each of the forms, [REDACTED] claimed a nominal \$1.00 amount of overpayment interest to be offset against the interest due on any deficiency resulting from the current examination of [REDACTED]'s [REDACTED] through [REDACTED] years, i.e., interest netting relief. None of the forms explain or identify the source of the overpayment interest.

In [REDACTED], [REDACTED] submitted a revised Form 843 for each of the years [REDACTED], [REDACTED], [REDACTED] and [REDACTED], and submitted a new Form 843 for year [REDACTED] (excise tax). In each of these forms, [REDACTED] specified the dollar amount of the requested refund or abatement but did not describe nor identify the source of the claimed overpayment interest. [REDACTED] requested the following amounts:

Year	Claimed amount of refund or abatement
[REDACTED]	\$ [REDACTED]

In each of the forms, [REDACTED] made the following reservation:

We reserve the right to amend this claim if other mutual periods of indebtedness are identified. We further reserve the right to amend this claim after the Internal Revenue Service and Treasury issue final regulations regarding the changes to the netting of interest in the Internal Revenue Service Restructuring and Reform Act of 1998.

According to your request for advice, the claimed overpayment interest results from an Appeals settlement pursuant to which a net operating loss ("NOL") was carried back from [REDACTED] to [REDACTED], consequently, triggering the carry-back of tax credits from [REDACTED] to the years [REDACTED] and [REDACTED]. However, according to the Appeals' schedule entitled, "Taxable Income, Tax Credits, and Deficiency Per Appeals," and the tax modules, [REDACTED] had originally reported an NOL of \$ [REDACTED] on its [REDACTED] tax return and had requested on a Form 1139³ and received refunds for its [REDACTED] [REDACTED], [REDACTED] and [REDACTED] years in [REDACTED]. So it appears that [REDACTED] had already carried back the [REDACTED] NOL of \$ [REDACTED] to and received the overpayment of taxes for its [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED] years, all back in [REDACTED]. As a result of changes made by Exam and the Appeals' settlement, that NOL was reduced to \$ [REDACTED]. The net result of this change, however, was minimal. Once the

³ Form 1139, Corporation Application for Refund, due to NOL carry-backs and unused credits created by a carryback.

other changes were taken into account, including tentative refunds, there were deficiencies only for [REDACTED] and [REDACTED] and only in the amounts of \$ [REDACTED] and \$ [REDACTED], respectively, and overpayments for [REDACTED], [REDACTED], and [REDACTED], of \$ [REDACTED], \$ [REDACTED], and \$ [REDACTED], respectively.⁴ Actual refunds and credits for the years at issue appear to have been made as set out below.⁵

Based on the information provided and our review of the Business Module transcripts, it appears that the following refunds of the overpayment of tax for its [REDACTED] year were made:

<u>Reason</u>	<u>Date</u>	<u>Amount</u>
Tentative Ref. pursuant to Form 1139 dated [REDACTED]	[REDACTED]	\$ [REDACTED]
Tentative Ref. pursuant to Form 1139 dated [REDACTED]	[REDACTED]	\$ [REDACTED]

Based on the information provided and our review of the Business Module transcripts, it appears that the following refunds or credits of the overpayment of tax for its [REDACTED] year were made:

<u>Reason</u>	<u>Date</u>	<u>Amount</u>
Tentative Ref. pursuant to Form 1139 dated [REDACTED]	[REDACTED]	\$ [REDACTED]
Tentative Ref. pursuant to Form 1139 dated [REDACTED]	[REDACTED]	\$ [REDACTED]
Credit from determination of overassessment by appeals	[REDACTED]	\$ [REDACTED]

Based on the information provided and our review of the Business Module transcripts, it appears that the following refunds of the overpayment of tax for its [REDACTED] year were made:

<u>Reason</u>	<u>Date</u>	<u>Amount</u>
Tentative Ref. pursuant to Form 1139 dated [REDACTED]	[REDACTED]	\$ [REDACTED]
Tentative Ref. pursuant to Form 1139 dated [REDACTED]	[REDACTED]	\$ [REDACTED]

Based on the information provided and our review of the Business Module

⁴ See the table attached as Schedule 1.

⁵ If you believe that any of the information in this or the following paragraphs concerning the dates, amounts, and reasons for any refunds or credits are incorrect, please inform Counsel immediately.

transcripts, it appears that the following refunds of the overpayment of tax for its [REDACTED] year were made:

<u>Reason</u>	<u>Date</u>	<u>Amount</u>
Tentative Ref. pursuant to Form 1139 dated [REDACTED]	[REDACTED]	\$ [REDACTED]
Tentative Ref. pursuant to Form 1139 dated [REDACTED]	[REDACTED]	\$ [REDACTED]

Based on the information provided and our review of the Business Module transcripts, it appears that the following refunds or credits of the overpayment of tax for its [REDACTED] year were made:

<u>Reason</u>	<u>Date</u>	<u>Amount</u>
Tentative Ref. pursuant to Form 1139 dated [REDACTED]	[REDACTED]	\$ [REDACTED]
Credit from determination of overassessment by appeals	[REDACTED]	\$ [REDACTED]

Based on the information provided and our review of the Business Module transcripts, it appears that the following refunds or credits of the overpayment of tax for its [REDACTED] year were made:

<u>Reason</u>	<u>Date</u>	<u>Amount</u>
Credit from determination of overassessment by appeals	[REDACTED]	\$ [REDACTED]

May/Sequa Interest Claims

In addition to submitting the Forms 843 in [REDACTED], [REDACTED] made a claim for the refund of excess interest allegedly paid on the deficiencies assessed against its [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED] years, citing the following authorities in support of its claim: May Department Stores Co. v. U.S., 36 Fed. Cl. 680 (1996); Kimberly-Clark Tissue Co. v. U.S., 97-1 USTC ¶ 50,308 (E.D. PA. 1997); Sequa Corp. v. U.S., 99-1 USTC 150,379 (S.D.N.Y. 1998); Rev. Rul. 88-98, 1988-2 C.B. 356, *modified and superceded by*, Rev. Rul. 99-40, I.R.B. 1999-40, 441. These authorities clarify when interest begins to accrue on a deficiency when the return originally reports an overpayment of tax which is refunded and credited and the deficiency is subsequently determined. [REDACTED] claims that the Service did not follow these authorities and assessed the interest on the deficiencies at a time when it had sufficient tax overpayments to offset the assessed deficiencies. It is not clear from the Forms 843 filed in [REDACTED] and [REDACTED] whether [REDACTED] wants this alleged overpayment of interest to be considered in its claim for interest netting relief under I.R.C. § 6621(d).

Discussion

In 1998, Congress provided for interest netting relief by enacting I.R.C. § 6621(d), but left the implementation of such relief to the Service. In Revenue Procedures 99-43 (applicable for interest accruing before the calendar quarter beginning October 1, 1998) and 2000-26 (applicable for interest accruing after the calendar quarter beginning October 1, 1998), the Service set forth procedures for requesting interest netting relief.

In general, in order to obtain the relief, Revenue Procedures 99-43 and 2000-26 state that a taxpayer must (1) file a claim for credit or refund of interest payable on the underpayment ("underpayment interest") under I.R.C. §§ 6601 or 6602 within the underpayment limitations period as defined in the revenue procedures and (2) file a claim for payment of overpayment interest within the overpayment limitations period as defined in the revenue procedures. The underpayment limitations period is defined in I.R.C. § 6511(a): three years from the time the return was filed or two years from the time the interest was paid, whichever period expires later. The overpayment limitations period is defined as the six-year period within which to file a suit pursuant to 28 U.S.C. §§ 2401 and 2501, i.e., within six years from the date of the allowance of the refund or credit of the overpayment of tax. See *Rev. Rul. 56-506*, 1956-2 C.B. 959.

A Form 872 represents an agreement to extend the assessment limitations period in I.R.C. § 6501. See I.R.C. § 6501(c)(4). Under I.R.C. § 6511(c), such an agreement will extend the period defined in I.R.C. § 6511(a). Since the underpayment limitations period is defined as the I.R.C. § 6511 period to file a claim for refund or credit, a Form 872 also extends the underpayment limitations period. However, since the overpayment limitations period is defined as the 28 U.S.C. §§ 2401 and 2501 period to file a suit, a Form 872 does not extend the overpayment limitations period.

Therefore, [REDACTED]'s assertion that it had timely filed its claim for overpayment interest because a Form 872 had extended the overpayment limitations period to [REDACTED], is wrong. Whether [REDACTED]'s overpayment interest claims are timely depends upon when the Service refunded or credited the related overpayment of taxes. For the refunds and credits made in [REDACTED] and [REDACTED], it appears that the claims are timely. Such refunds were made for every year except [REDACTED]. Thus the claims are timely with regard to the other years, but only to the extent of the [REDACTED] and [REDACTED] credits or refunds. And, of course, the claims are timely for any amounts relating to the [REDACTED] year. For the amounts refunded or credited in [REDACTED] or [REDACTED], the claims are not timely.

Furthermore, section 6621(d) generally applies to interest for periods (calendar quarters) beginning after July 22, 1998 (i.e., interest accruing on or after October 1, 1998). See H. R. Rep. No. 364 (Part 1), 105th Cong., 1st Sess. 64 (1998); S. Rep. No. 174, 105th Cong., 2d Sess. 62 (1998); H. R. Conf. Rep. No. 599, 105th Cong., 2d Sess. 257 (1998). However, § 3301(c)(2) of the IRS Restructuring and Reform Act of 1998, July 22, 1998, P.L. 105-206, provides that § 6621(d) applies to interest for

periods beginning before July 22, 1998 (*i.e.*, interest accruing before October 1, 1998), provided certain conditions are met. First, both periods of limitation applicable to the tax underpayment and to the tax overpayment (as described in section 4.02 of this revenue procedure) must have been open on July 22, 1998. Second, the taxpayer must: (a) reasonably identify and establish periods of tax overpayments and underpayments for which the net interest rate of zero applies, and (b) not later than December 31, 1999, request the Secretary of the Treasury to apply § 6621(d) to such periods. [REDACTED] has yet to reasonably identify and establish the periods of tax overpayments and underpayments for which it claims the net interest rate of zero applies.

This writing may contain privileged information. Any unauthorized disclosure of this writing may have an adverse effect on privileges, such as the attorney client privilege. If disclosure becomes necessary, please contact this office for our views.

If you have any questions or need further assistance, please contact J. Scott Hargis at (949) 360-3435.


J. SCOTT HARGIS
Senior Attorney